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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Arizona Cardinals Football Club, Inc.,)
10 an Arizona corporation; and National)
11 Football League Management Council, a)
12 non-profit association,)

12 Plaintiffs,

13 vs.)

14 Wendell Bryant, an unmarried man,)
15 Defendant.)
16 _____)

No. CV-08-1541-PHX-DGC

ORDER AND DEFAULT JUDGMENT

17
18 Wendell Bryant is a former football player for the Arizona Cardinals. Pursuant to the
19 NFL collective bargaining agreement, the Cardinals and Bryant submitted separate non-
20 injury grievances to an NFL arbitrator. The arbitrator denied Bryant's grievance and
21 sustained the Cardinals' grievance, awarding the club \$2,767,778.

22 The Cardinals and the NFL Management Council filed a complaint seeking an order
23 confirming the arbitration award pursuant to the Labor Management Relations Act, 29 U.S.C.
24 § 185 ("LMRA"). Dkt. #1. Bryant has not answered or otherwise responded to the
25 complaint. The Clerk entered Bryant's default pursuant to Rule 55(a) of the Federal Rules
26 of Civil Procedure. Dkt. #12.

27 Plaintiffs have filed a motion for default judgment. Dkt. #18. For reasons stated
28 below, the Court will grant the motion.

1 Because Bryant's default has been properly entered (*see* Dkt. ##6, 11, 12), the Court
2 has discretion to grant default judgment pursuant to Rule 55(b). *See Aldabe v. Aldabe*, 616
3 F.2d 1089, 1092 (9th Cir. 1980). Factors the Court should consider include (1) the
4 possibility of prejudice to Plaintiffs, (2) the merits of the claim, (3) the sufficiency of the
5 complaint, (4) the amount of money at stake, (5) the possibility of a dispute concerning
6 material facts, (6) whether default was due to excusable neglect, and (7) the policy favoring
7 a decision on the merits. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

8 **A. Possible Prejudice to Plaintiffs.**

9 The first *Eitel* factor weighs in favor of granting default judgment because Plaintiffs
10 will be prejudiced if default judgment is not entered. Plaintiffs served process on Bryant
11 more than seven months ago. *See* Dkt. #6. Bryant has not responded to the complaint or
12 otherwise shown an intention to defend this action. If Plaintiffs' motion for default judgment
13 is not granted, Plaintiffs "will likely be without other recourse for recovery." *PepsiCo, Inc.*
14 *v. Cal. Security Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

15 **B. The Merits of the Claim and the Sufficiency of the Complaint.**

16 The second and third *Eitel* factors favor a default judgment where the complaint states
17 a claim for relief under the notice pleading standards of Rule 8. *See Cal. Security Cans*, 238
18 F. Supp. 2d at 1175; *Danning v. Lavine*, 572 F.2d 1386, 1388-89 (9th Cir. 1978). Plaintiffs'
19 complaint alleges that Bryant has violated the grievance and arbitration procedures in the
20 NFL collective bargaining agreement by failing to comply with the terms of the arbitration
21 award. Dkt. #1. This is sufficient to state a plausible claim for confirmation of the
22 arbitration award under the LMRA. *See Grammar v. Artists Agency*, 287 F.3d 886, 890
23 (9th Cir. 2002); *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509 (2001).
24 The second and third *Eitel* factors therefore favor a default judgment.

25 **C. The Amount of Money at Stake.**

26 Under the fourth *Eitel* factor, the Court considers the amount of money at stake in
27 relation to the seriousness of the defendant's conduct. *See Cal. Security Cans*, 238 F. Supp.
28 2d at 1176. Plaintiffs have obtained a valid arbitration award against Bryant in the amount

1 \$2,767,778. While the amount of the award is substantial, it is not unreasonable on its face
 2 given the size of player salaries in the NFL. Moreover, Bryant has presented no explanation
 3 or defense for his failure to pay the award. This factor weighs in favor of a default judgment.
 4 *See Bd. of Trs. of Cal. Metal Trades v. Pitchometer Propeller*, No. C-97-2661-VRW, 1997
 5 WL 7979222, at *1 (N.D. Cal. Dec. 15, 1997) (granting default judgment where amount of
 6 money at stake was reasonable and justified).

7 **D. Possible Dispute Concerning Material Facts.**

8 Given the sufficiency of the complaint and Bryant's default (*see* Dkt. ##1, 12),
 9 "no genuine dispute of material facts would preclude granting [Plaintiffs'] motion." *Cal.*
 10 *Security Cans*, 238 F. Supp. 2d at 1177; *see Geddes*, 559 F.2d at 560. Moreover, even if
 11 factual disputes existed, the Court's scope of review is extremely limited under the LMRA.
 12 *See Garvey*, 532 U.S. at 509.

13 **E. Whether Default Was Due to Excusable Neglect.**

14 Bryant was properly served with process. *See* Dkt. #6; Fed. R. Civ. P. 4(e); Ariz. R.
 15 Civ. P. 4.1(d). It therefore is "unlikely that [his] failure to answer and the resulting default
 16 was the result of excusable neglect." *Gemmel v. Systemhouse, Inc.*, No. CIV 04-187-TUC-
 17 CKJ, 2008 WL 65604, at *5 (D. Ariz. Jan. 3, 2008).

18 **F. The Policy Favoring a Decision on the Merits.**

19 "Cases should be decided upon their merits whenever reasonably possible." *Eitel*, 782
 20 F.2d at 1472. But the mere existence of Rule 55(b) "indicates that this preference, standing
 21 alone, is not dispositive." *Cal. Security Cans*, 238 F. Supp. at 1177 (citation omitted).
 22 Moreover, Bryant's failure to defend this action "makes a decision on the merits
 23 impractical[.]" *Id.* The Court therefore is not precluded from entering default judgment
 24 against Bryant. *See id.*; *Gemmel*, 2008 WL 65604 at *5.

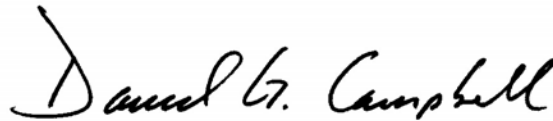
25 **G. Conclusion.**

26 Having reviewed Plaintiffs' motion, and having carefully considered the *Eitel* factors
 27 as a whole, the Court concludes that, pursuant to Rule 55(b), the entry of default judgment
 28 is appropriate.

IT IS ORDERED:

1. Plaintiffs' motion for default judgment (Dkt. #18) is **granted**.
2. The arbitration award in the amount of \$2,767,778.00 (*see* Dkt. #1-2 at 23-24) is **confirmed**.
3. Default judgment is entered in favor of Plaintiffs and against Defendant Wendell Bryant in the amount of **\$2,767,778.00**, plus interest.
4. Plaintiffs are awarded attorneys' fees and costs in the amount of **\$6,763.00**.
5. The Clerk is directed to **terminate** this action.

DATED this 6th day of April, 2009.



David G. Campbell
United States District Judge